1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION 5 6 ARINDAM BANERJEE and JOGESH HARJAI, Individually and on Behalf of All 7 Others Similarly Situated, 8 Plaintiffs, v. **FUND** 9 AVINGER, INC., JEFFREY M. SOINSKI, 10 MATTHEW B. FERGUSON, DONALD A. LUCAS, JOHN B. SIMPSON, JAMES 11 B. McELWEE, JAMES G. CULLEN, THOMAS J. FOGARTY, CANACCORD 12 GENUITY, INC., COWEN AND COMPANY, LLC, OPPENHEIMER & 13 CO., BTIG LLC, and STEPHENS, INC., 14 Defendants. 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Case No. 17-cv-3400-CW

ORDER APPROVING PLAN OF ALLOCATION OF NET SETTLEMENT This matter came on for hearing on October 23, 2018 (the "Settlement Hearing") on

1 2 Plaintiffs' Counsel's motion to determine whether the proposed plan of allocation of the Net 3 Settlement Fund (the "Plan of Allocation") created by the Settlement achieved in the above-4 captioned class action (the "Action") should be approved. The Court having considered all matters 5 submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement 7 Class Members, who or which could be identified with reasonable effort, and that a summary notice 8 of the hearing substantially in the form approved by the Court was published in *Investor's Business* 9 Daily and was transmitted over PR Newswire pursuant to the specifications of the Court; and the 10 Court having considered and determined the fairness and reasonableness of the proposed Plan of

Allocation,

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## NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- This Order approving the proposed Plan of Allocation incorporates by reference the definitions in the Stipulation of Settlement, dated May 9, 2018 (Docket No. 115-3) (the "Stipulation"), and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
- 2. The Court has jurisdiction to enter this Order approving the proposed Plan of Allocation, and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.
- 3. Notice of Plaintiffs' Counsel's motion for approval of the proposed Plan of Allocation was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

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- 4. Copies of the Notice, which included the Plan of Allocation, were mailed to over 16,255 potential Settlement Class Members and nominees as of October 11, 2018, and no objections to the Plan of Allocation have been received to date or by the October 2, 2018, deadline to file any objections. Plaintiffs filed a Plan of Allocation that includes a non-substantive correction on October 16, 2018. Docket No. 127-1.
- 5. The Court hereby finds that the formula for the calculation of the claims of Claimants, as set forth in the Plan of Allocation filed on October 16, 2018, provides a fair, reasonable and adequate basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.
- 6. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair, reasonable and adequate to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Plaintiffs' Counsel and filed on October 16, 2018. Docket No. 127-1.
- 7. There is no just reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this 24th day of October , 2018

The Honorable Claudia Wilken United States District Judge